

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

)	Civil No. 10-2665-JAH(WVG)
LIFE TECHNOLOGIES CORPORATION,)	
)	
Plaintiff,)	NOTICE AND ORDER FOR EARLY
)	NEUTRAL EVALUATION CONFERENCE
v.)	
)	
BIOSEARCH TECHNOLOGIES, INC.,)	
)	
Defendant.)	
_____)	

IT IS HEREBY ORDERED that an Early Neutral Evaluation of your case will be held on April 29, 2011, at 9:00 AM before United States Magistrate Judge William V. Gallo, United States Courthouse, Courtroom F, First Floor, 940 Front Street, San Diego, California.

The following are mandatory guidelines for the parties preparing for the Early Neutral Evaluation Conference.

1. Purpose of the Conference

The purpose of the Early Neutral Evaluation Conference ("ENE") is to permit an informal discussion between the attorneys, parties and the settlement judge of every aspect of the lawsuit in an effort to achieve an early resolution of the case. All conference discussions will be informal, off the record, privileged and

1 confidential. Counsel for non-English speaking parties is responsi-
2 ble for arranging for the appearance of an interpreter at the
3 conference.

4 **2. Personal Appearance of Parties Is Required:**

5 All parties, adjusters for insured defendants, and other
6 representatives of a party having full and complete authority^{1/} to
7 enter into a binding settlement, and the principal attorneys
8 responsible for the litigation, must be present in person and
9 legally and factually prepared to discuss settlement of the case.
10 See Rule 16.1(c) of the Local Rules of the United States District
11 Court for the Southern District of California.

12 **3. Full Settlement Authority Required**

13 In addition to counsel who will try the case, a party or
14 party representative with full settlement authority must be present
15 for the conference. In the case of a corporate entity, an autho-
16 rized representative of the corporation who is not retained outside
17 counsel must be present and must have discretionary authority to
18 commit the company to pay an amount up to the amount of the
19 plaintiff's prayer (excluding punitive damage prayers). The purpose
20 of this requirement is to have representatives present who can
21 settle the case during the course of the conference without

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23 ¹ "Full authority to settle" means that the individuals at the settlement
24 conference must be authorized to fully explore settlement options and to
25 agree at that time to any settlement terms acceptable to the parties.
26 Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648 (7th Cir.
27 1989). The person needs to have "unfettered discretion and authority" to
28 change the settlement position of a party. Pitman v. Brinker Intl., Inc.,
216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring a person
with unlimited settlement authority to attend the conference includes that
the person's view of the case may be altered during the face to face
conference. Id. at 486. A limited or a sum certain of authority is not
adequate. The person with full settlement authority must be able to
negotiate a settlement without being restricted by any predetermined level
of authority. Nick v. Morgan's Foods, Inc., 270 F.3d 590 (8th Cir. 2001).

1 consulting a superior. Counsel for a government entity may be
2 excused from this requirement so long as the government attorney who
3 attends the ENE conference (1) has primary responsibility for
4 handling the case; and (2) may negotiate settlement offers which the
5 attorney is willing to recommend to the government official who has
6 ultimate settlement authority.

7 Unless there are **extraordinary circumstances**, persons
8 required to attend the conference pursuant to this Order shall not
9 be excused from personal attendance. Requests for excuse from
10 attendance for extraordinary circumstances shall be made in *writing*
11 at least 48 hours prior to the conference. Failure to appear at the
12 ENE conference will be grounds for sanctions.

13 **4. Settlement Proposal and Response Required**

14 No later than 15 (fifteen) days before the scheduled ENE
15 Conference, Plaintiff(s) shall submit to Defendant(s) a written
16 settlement proposal. No later than 10 (ten) days before the
17 scheduled ENE Conference, Defendant(s) shall submit a response to
18 Plaintiff(s)' settlement proposal. All parties shall be prepared to
19 address in their ENE Statements, and discuss at the ENE Conference,
20 the settlement proposal and the response.

21 **5. ENE Statements Required**

22 **The Court requires that the parties file ENE Statements,**
23 **which may be confidentially submitted within the party's discretion.**
24 No later than **five (5) court days prior to the ENE**, the parties
25 shall submit directly to Judge Gallo's chambers statements of **five**
26 **pages or less** which outline the nature of the case, the claims, the
27 defenses, and the parties' positions regarding settlement of, and
28 attempts to settle the case. **All briefs must comply with Judge**

Gallo's Chambers Rules.

6. Case Management Under The Federal Rules of Civil Procedure

In the event the case does not settle at the ENE Conference, the parties shall also be prepared to discuss the following matters at the conclusion of the conference.

a. Any anticipated objections under Federal Rule of Civil Procedure 26(a)(1)(E) to the initial disclosure provisions of Federal Rule of Civil Procedure 26(a)(1)(A-D);

b. The scheduling of the Federal Rule of Civil Procedure 26(f) conference;

c. The date of initial disclosure and the date for lodging the discovery plan following the Rule 26(f) conference; and,

d. The scheduling of a Case Management Conference pursuant to Federal Rule of Civil Procedure 16(b).

The Court will issue an appropriate order addressing these issues and setting dates as appropriate.

7. Time Allotted

The Court generally allots two (2) hours for ENEs. Counsel should be prepared to be succinct and to the point. Requests for additional time must be made in writing in the party's ENE statement, accompanied by a short explanation.

8. New Parties Must Be Notified by Plaintiff's Counsel

Plaintiff's counsel shall give notice of the ENE Conference to all parties responding to the Complaint after the date of this Notice.

9. Requests to Continue an ENE Conference

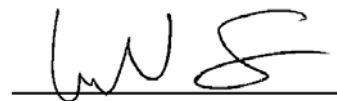
Local Rule 16.1(c) requires that an ENE take place within 45 days of the filing of the first answer. Requests to continue ENE

1 conferences are rarely granted. Counsel seeking to reschedule an ENE
2 must first confer with opposing counsel. The Court will consider
3 formal, written *ex parte* requests to continue an ENE conference when
4 extraordinary circumstances exist that make a continuance appropri-
5 ate. In and of itself, having to travel a long distance to appear
6 at the ENE conference is not an extraordinary circumstance. **Absent**
7 **extraordinary circumstances, requests for continuances of the ENE**
8 **conference may not be considered unless submitted in writing no less**
9 **than seven (7) calendar days prior to the scheduled conference.**
10 Please refer to Judge Gallo's Chambers Rules for additional guidance
11 regarding the areas which must be addressed in the request.

12 Questions regarding this case may be directed to the
13 Magistrate Judge's Research Attorney at (619) 557-6384. Please
14 consult Judge Gallo's Chambers Rules, available on the Court's
15 website, before contacting chambers with your question.

16 IT IS SO ORDERED.

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18 DATED: March 4, 2011

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21 Hon. William V. Gallo
22 U.S. Magistrate Judge
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